

BOBBI W.Y. LUM-MEW 6299
Regulated Industries Complaints
Office
Department of Commerce and Consumer
Affairs
State of Hawaii
Leiopapa A Kamehameha Building
235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
Telephone: 586-2660

Attorney for Department of Commerce
and Consumer Affairs

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

MAY 22 9 46 AM '02

HEARINGS OFFICE

DEPT. OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

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PROF. & REG. DIV.
LIC. DIV.
MAY 23 2002

BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS, AND LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the
Architect's License of

EDGAR C. ESLINGER,

Respondent.

ENG 2002-4-L

SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR
DISCIPLINARY ACTION AND
BOARD'S FINAL ORDER; EXHIBIT
"1"

HEARINGS OFFICE

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DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

SETTLEMENT AGREEMENT PRIOR TO FILING
OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

EDGAR C. ESLINGER (hereinafter "Respondent"), and the
Department of Commerce and Consumer Affairs, by and through its
Regulated Industries Complaints Office (hereinafter "RICO") enter
into this Settlement Agreement as follows:

WHEREAS, Respondent is licensed as an architect by the
State of Hawaii, License No. AR 1006;

WHEREAS, RICO received information that disciplinary
action had been taken against the Respondent in Nevada in
February 2001. Attached as Exhibit "1" is a true and correct

copy of the Settlement Agreement and Order signed by the Respondent and the Nevada State Board of Architecture, Interior Design, and Residential Design;

WHEREAS, Respondent sincerely does not believe that the settlement agreement he signed was considered to be "disciplinary action", and so he believes he was not obligated to report it;

WHEREAS, Respondent maintains he did not violate the licensing laws of Nevada and submits that the settlement agreement with Nevada stemmed from the fact that he was an employee of a company that he thought was licensed in Nevada, and who failed to inform him for four months that it was not. The proposed project was for a long time client who owns properties nationally but is St. Louis based. Respondent had applied for licensure in Nevada. He at no time solicited work in Nevada and did not hold himself out as an architect in Nevada. The client was aware of his registration status. At the time of the settlement with Nevada, no contract to perform any work in Nevada had been entered into. Had the company for which he was an employee been licensed in Nevada, there would not have been an issue or need for any settlement agreement;

WHEREAS, Respondent may be in violation of Hawaii Revised Statutes (hereinafter "HRS") § 436B-19(15) and if proven at hearing, understands he may be subject to penalties, including but not limited to, revocation or suspension of his license;

WHEREAS, Respondent has been fully informed of the allegations;

WHEREAS, Respondent has been advised of his right to have an attorney represent him in this matter and has voluntarily elected to waive this right;

WHEREAS, Respondent does not admit to the allegation, however, desires to settle the matter in an expeditious manner;

WHEREAS, Respondent's current address is 1242 Ticonderoga, Chesterfield, Missouri 63017;

WHEREAS, Respondent has been fully apprised of his right to a hearing pursuant to HRS Chapters 91 and 92, and has voluntarily elected to waive his right to a hearing; and

The parties hereto desire to settle this matter without a hearing;

NOW, THEREFORE, the parties agree, subject to the approval and order of the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects (hereinafter "Board") that:

1. Jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Pursuant to HRS § 91-9(d), Respondent voluntarily waives his right to a hearing and agrees to a disposition of this case in accordance with the terms of this Settlement Agreement.

3. No coercion or duress. Respondent enters into this Settlement Agreement freely and voluntarily.

4. Fine Payment. Respondent agrees to pay a fine of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Respondent shall pay this fine at the time he returns this signed Settlement Agreement. Payment shall be by cashier's check or money order payable to "DCCA Compliance Resolution Fund" and mailed to the Regulated Industries Complaints Office, Attn: Bobbi Lum-Mew, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813.

5. Approval of the Board. Respondent is aware that this Settlement Agreement shall not become binding upon the parties unless and until it is approved by the Board.

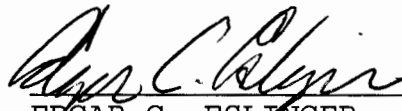
6. No objection if Board fails to approve. If the Board does not approve and does not issue an order pursuant thereto, and requires instead that this matter be presented for administrative hearing before a hearings officer of the Department of Commerce and Consumer Affairs in accordance with HRS § 91-9, Respondent agrees that neither he nor his attorney will raise any objection on any administrative or adjudicatory level on the basis that the Board has become disqualified to consider the case before it because of its review and consideration of this Settlement Agreement.

7. Ambiguities, if any, shall be construed to protect the consuming public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner which most completely protects the interest of the consuming public.

8. Complete Agreement. This Settlement Agreement:

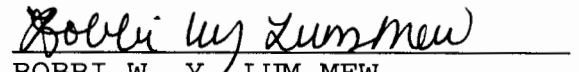
- a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
- b) contains the entire agreement of the parties; and
- c) may only be modified, changed or amended by written instrument duly executed by all parties hereto.

DATED: 5/14/2002, Missouri, _____.



EDGAR C. ESLINGER
Respondent

DATED: Honolulu, Hawaii, MAY 2 22002.



BOBBI W. Y. LUM-MEW
Attorney for Department of
Commerce and Consumer Affairs

IN THE MATTER OF THE ARCHITECT'S LICENSE OF EDGAR C. ESLINGER;
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY
ACTION AND BOARD'S FINAL ORDER; ENG 2002-4-L

APPROVED AND SO ORDERED:
BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS,
AND LANDSCAPE ARCHITECTS
STATE OF HAWAII

June 6, 2002

RUSSELL Y.J. CHUNG
Chairperson

DATE

Laurel Mau Nahme
LAUREL MAU NAHME
Vice Chairperson

ARNALDO E. PREPOSE

Theodore E. Garduque
THEODORE E. GARDUQUE

Randall M. Hashimoto
RANDALL M. HASHIMOTO

Ken R. Hayashida
KEN R. HAYASHIDA

Lester H. Inouye
LESTER H. INOUE

JAY ISHIBASHI

GARY B.K.T. LEE

Mike Y. Miura
MIKE Y. MIURA

Wallace T. Oki
WALLACE T. OKI

KEN OTA

Oscar Portugal
OSCAR PORTUGAL

Carol S. Sakata
CAROL S. SAKATA

STATE OF MISSOURI

COUNTY OF

St. Louis

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On this 14th day of may, 2002,

before me personally appeared EDGAR C. ESLINGER, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

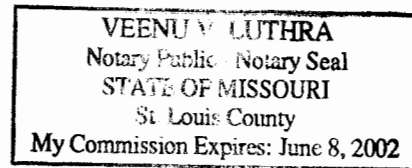
Veenu V Luthra

Name:

Notary Public, State of Missouri.

County of St. Louis

My Commission expires: 6-8-2002



BEFORE THE NEVADA STATE BOARD OF ARCHITECTURE,
INTERIOR DESIGN AND RESIDENTIAL DESIGN

* * * * *

Nevada State Board of Architecture,
Interior Design & Residential Design

Case Number: 01-014N

Complainant

versus

Edgar C. Eslinger,
KBA-Durrant, Inc.
Nonregistrants

Respondents

Settlement Agreement and Order

WHEREAS, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN, (BOARD), has filed and properly served notice of an administrative complaint against **Edgar C. Eslinger** and **KBA-Durrant, Inc.** (RESPONDENTS), alleging violation of the statutes and/or regulations controlling the practice of architecture, registered interior design or residential design in the state of Nevada.

The controversy and subject matter of this dispute which this settlement agreement is intended to resolve relates to information that the RESPONDENTS had allegedly held themselves out as being qualified to provide architectural services and allegedly engaged in the practice of architecture without having a certificate of registration issued by the Board, which would, if proven, constitute a violation of NRS 623.360.1(a, b, c). Project: Robinsons May Department Store located in the Fashion Show Mall, in Las Vegas, Nevada.

WHEREAS, the parties mutually desire to settle the matters in an expeditious manner.

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

Jurisdiction

The RESPONDENTS acknowledge that the BOARD has the jurisdiction to impose a civil penalty of not more than \$10,000 for each violation of any provisions of Nevada Revised Statutes (NRS) Chapter 623 or any regulation adopted by the BOARD, and/or present violations of NRS 623.360 to the District Attorney of each county for prosecution by court action.

EXHIBIT "1"

RECEIVED

FEB 16 2001

NEVADA STATE BOARD
OF ARCHITECTURE

DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

JAN 15 1 45 PM '02

PROF & VOCATIONAL
LICENSING DIVISION

The RESPONDENTS acknowledge that the BOARD will retain jurisdiction over this matter until all terms and conditions set forth in this settlement agreement have been met to the satisfaction of the BOARD.

Administrative Penalty

The RESPONDENTS agree to pay the sum of NINE THOUSAND FIVE HUNDRED (\$9,500) DOLLARS as full and final settlement of the complaint on file against them. Upon satisfactory submission of the amount of this fine to the staff of the BOARD, the BOARD may execute the order attached to this settlement agreement which will result in the dismissal, with prejudice of the complaint.

Compliance Statute

The RESPONDENTS understand the statutes and/or regulations previously cited as allegedly having been violated and without admitting such allegations, agree to discontinue any prohibitive practices including, but not limited to, holding themselves out to the public as architects, putting out any sign, card or other device (plans) which indicates to the public that they are architects or that they are otherwise qualified to engage in the practice of architecture and engaging in the practice of architecture, without having a certificate of registration pursuant to NRS 623.360.1 (a,b,c).

Costs

The RESPONDENTS shall reimburse the BOARD for the costs of the investigation and prosecution of this matter in the amount of EIGHT HUNDRED (\$800) DOLLARS.

Settlement

The RESPONDENTS do not admit the BOARD's allegations, however, consent and agree to all terms and conditions of this settlement and consent to its issuance upon acceptance by the BOARD. RESPONDENTS also waive Findings of Fact and Conclusions of Law in this settlement.

Public Record

The RESPONDENTS acknowledge that once adopted by the BOARD, this settlement agreement and all associated documentation become a matter of public record.

Voluntary Waiver of Rights

The RESPONDENTS may at all times obtain the advice from competent counsel of their choice. The RESPONDENTS have, at all times, received full cooperation of the Board's staff before making the decision to settle this matter. No coercion has been exerted upon the RESPONDENTS, nor have any promises been made other than those reflected in this agreement.

Release from Liability

In execution of this settlement agreement, the RESPONDENTS for themselves, their executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN and the Nevada Attorney General and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgements, executions, claims and demands whatsoever known and unknown, in law or equity, that RESPONDENTS ever had, now have, may have or claim to have against any or all of the persons or entities names in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

Indemnification

The RESPONDENTS, for himself/herself, his/her heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN, the Nevada Attorney General's office and each of their members, agents and employees in their individual and representative capacities against any and all claims, suits, demands, actions, debts, damages, costs, charges, and expenses, including court costs and attorney's fees against any persons entities as well as all liability, losses, and damages of any nature whatsoever that the persons and entities named in this paragraph shall have or may at any time sustain or suffer by reason of this investigation, this disciplinary action, this settlement or its administration.

Acceptance by the Board

This settlement agreement will not be submitted for BOARD consideration until after it has been agreed to and executed by the RESPONDENTS. The settlement agreement shall not become effective until it has been approved by a majority of the BOARD and endorsed by a representative member of the BOARD.

It is hereby agreed between the parties that this settlement agreement shall be presented to the NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN with a recommendation for approval from the BOARD staff at the next regularly scheduled meeting of the BOARD.

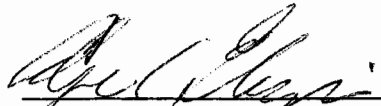
The RESPONDENTS understand that the BOARD is free to accept or reject this settlement agreement and, if rejected by the BOARD, a formal disciplinary hearing on the complaint against the RESPONDENTS may be scheduled. The RESPONDENTS hereby agree to waive any rights they might have to challenge the impartiality of the BOARD to hear the disciplinary complaint, if after review by the BOARD, this settlement agreement is rejected.

If the BOARD does not accept the settlement agreement, it shall be regarded as null and void. Admissions by the RESPONDENTS in the settlement agreement will not be regarded as evidence against them at the subsequent disciplinary hearing. The RESPONDENTS will be free to defend themselves and no inferences against them will be made from their willingness to have entered into this agreement.

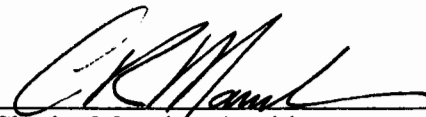
Complete Agreement

This settlement agreement consists of four pages and embodies the entire agreement between the BOARD and RESPONDENTS. It may not be altered, amended or modified without the express consent of the parties. This settlement agreement is contingent upon payment of the administrative penalties within 15 days or the agreement is null and void.

Dated this 12 day of FEBRUARY, 2001.



Edgar C. Eslinger, Individually



Charles Marsden, President
KBA-Durrant, Inc.

Board Order

IT IS SO ORDERED.

Dated this 8TH day of MARCH, 2001.

NEVADA STATE BOARD OF ARCHITECTURE,
INTERIOR DESIGN AND RESIDENTIAL DESIGN

By: 

Greg Erny, Chairman